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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DOMINO'S PIZZA FRANCHISING LLC, a Delaware limited liability company; and DOMINO'S PIZZA MASTER ISSUER LLC, a Delaware limited liability company,

Plaintiffs.

V.

CALVIN YEAGER, an individual;
VALLEY PIZZA, INC., a Nevada
corporation; and LAKESIDE PIZZA,
INC., a California corporation.

Defendants.

CASE NO. 3:10-CV-560

**MOTION FOR ORDER TO SHOW
CAUSE WHY MATTHEW
MATTLOCK, MELISSA YEAGER, AND
PRONTO PIZZA, INC. SHOULD NOT
BE HELD IN CONTEMPT OF COURT**

COMES NOW, plaintiffs DOMINO'S PIZZA FRANCHISING LLC and DOMINO'S PIZZA MASTER ISSUER LLC (collectively, "Domino's"), by and through their counsel, Armstrong Teasdale LLP, hereby move this Court for an order to show cause why Matthew Matlock, Melissa Yeager, and Pronto Pizza, Inc. should not be held in contempt for failing to: (1) return the Operations Manual; (2) return the Customer List;

1 and (3) transfer the telephone number 775-265-2929, pursuant to this Court's Order, dated
2 November 18, 2010 ("Enforcement Order").
3

4 This motion is based upon Fed.R.Civ.P 65 and 70, the Points and Authorities
5 attached hereto, and such further argument the Court may permit.
6

7 DATED this 25th day of April, 2011.
8

9 ARMSTRONG TEASDALE, LLP
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11 By: Lance P. Maiss
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1 **POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This matter involves a dispute between a franchisor and franchisee, in which Final
4 Judgment has already been rendered in the United States District Court for the Eastern
5 District of Michigan (“Michigan Federal Court”) in favor of Domino’s, the franchisers of
6 the well-known pizza delivery business bearing the “DOMINO’S PIZZA” name and logo.
7

8 Defendants Calvin Yeager, Valley Pizza, Inc. (“Valley”) and Lakeside Pizza, Inc.
9 (“Lakeside”) had been the owner and operator of franchises of Domino’s. Yeager is
10 President of both Valley and Lakeside. After defaulting on Franchise Agreements with
11 Domino’s, on or about November 13, 2009, Domino’s terminated the Franchise
12 Agreements with defendants.
13

14 Subsequently, defendants failed to comply with post-term obligations contained in
15 the Franchise Agreements. As a result, on January 25, 2010, Domino’s obtained a
16 preliminary injunction against defendants, requiring defendants to comply with the post-
17 term obligations (“Injunction Order”). This time, defendants ignored the Injunction
18 Order. Thereafter, Domino’s obtained its Final Judgment against defendants, which
19 included those acting in concert or privity with defendants.
20

21 After defendants ignored the Final Judgment, on November 18, 2010, Domino’s
22 obtained from this Court the Enforcement Order, whereby Matthew Mattlock, Melissa
23 Yeager and/or Pronto Pizza, Inc. were held to have been acting in concert or privity with
24 defendants in failing to comply with the post-term obligations contained in the Franchise
25 Agreements between plaintiffs and defendants. This Court ordered Matthew Mattlock,
26

Melissa Yeager and/or Pronto Pizza, Inc. to transfer the telephone number 775-265-2929 to plaintiffs; and (2) return the Operations Manual and Customer List to plaintiffs, within 45 days of the Enforcement Order. Notice of Entry of Order was then filed and served upon them.

Since that time, Matthew Mattlock, Melissa Yeager and Pronto Pizza, Inc. have failed to comply with this Court's Enforcement Order.

ARGUMENT

L. CONTEMPT OF COURT ORDERS

A district court has wide latitude in determining whether there has been a contemptuous defense of its order. *Gifford v. Heckler*, 741 F.2d 263, 266 (9th Cir. 1984). To avoid sanctions for contempt, disobedient parties must show that they took all reasonable steps within their power to insure compliance with the court's order. *Stone v. City and County of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992).

Fed.R.Civ.P. 65(d)(2)(C) provides that other persons who are in active concert or participation with the parties are bound by the injunction order. Thus, nonparties to a lawsuit are not inoculated against charges of civil contempt if they knowingly aid or abet an enjoined party in transgressing a court order. *Goya Foods, Inc. v. Wallack Management Co.*, 290 F.3d 63, 75 (1st Cir. 2002). Moreover, Fed.R.Civ.P. 70 gives the district court a discrete and limited power to deal with parties who thwart final judgments by refusing to comply with orders to perform specific acts. *Analytical Engineering Inc. v. Baldwin Filters, Inc.*, 425 F.3d 443, 449 (7th Cir. 2005). Rule 70(e) actually provides that the court may hold the disobedient party in contempt. Finally, Fed.R.Civ.P. 71 provides that:

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedures for enforcing the order is the same as for a party.

Thus, when an injunction is addressed to a nonparty and he is given notice of the injunction, Rule 71 permits a district court to use “the same processes for enforcing obedience to the order as if [he were] a party,” such as holding him in contempt for violating it. *Irwin v. Mascott*, 370 F.3d 924, 931 (9th Cir. 2004).

II. HAVING IGNORED THE ENFORCEMENT ORDER, THIS COURT MUST ISSUE AN ORDER TO SHOW CAUSE WHY MATTHEW MATTLOCK, MELISSA YEAGER, AND PRONTO PIZZA, INC. SHOULD NOT BE HELD IN CONTEMPT AND SUBJECT TO SANCTIONS

In the case at bar, the Enforcement Order was properly issued by this Court and served upon Matthew Mattlock, Melissa Yeager, and Pronto Pizza, Inc.¹ To date, there has been no compliance with the Enforcement Order. In fact, there has been no response whatsoever by them. Instead, Domino's has been denied its rights under its Franchise Agreements, the Injunction Order, and Final Judgment, and now the Enforcement Order, all the while incurring attorney's fees and expenses. As a result, this Court must properly issue an Order to Show Cause why Matthew Mattlock, Melissa Yeager, and Pronto Pizza, Inc. should not be held in contempt and subject to sanctions.

CONCLUSION

Domino's has been trying to enforce its rights as the Franchisor for several years. Through an Injunction Order, a Final Judgment, and now the Enforcement Order, Domino's has been denied its rights under the law. Therefore, Matthew Mattlock, Melissa

¹ Mattlock and Pronto Pizza have been previously served with the Injunction Order and Final Judgment as well.

1 Yeager, and Pronto Pizza, Inc., must be ordered before this Court to determine why they
2 should not be held in contempt and subject to sanctions.

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4 DATED this 25th day of April, 2011.
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9 ARMSTRONG TEASDALE, LLP
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CERTIFICATE OF SERVICE

I, Zabett Buzzone, declare that:

I am over 18 years of age and not a party to, or interested in, the within entitled action. I am an employee of Armstrong Teasdale, LLP located at 50 West Liberty Street, Suite 950, Reno, Nevada, 89501.

On, April 25, 2011 I served the following document:

MOTION FOR ORDER TO SHOW CAUSE WHY MATTHEW MATTLOCK, MELISSA

YEAGER AND PRONTO PIZZA, INC., SHOULD NOT BE HELD IN CONTEMPT OF COURT

[X] BY MAIL [N.R.C.P. 5(b)] I caused each envelope to be placed for deposit with the U.S. Postal Service in a sealed envelope, with postage prepaid, and that each envelope was placed for collection and mailing on that date following ordinary business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the U.S. Postal Service. Correspondence so collected and processed is deposited with the U.S. Postal Service that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit;

Calvin Yeager
987 Edgewood Circle
South Lake Tahoe, CA 96150

Pronto Pizza
1281 Kimmerling Road, Suite 18-A
Gardnerville, NV 89460

Melissa Yeager
1281 Kimmerling Road, Suite 18-A
Gardnerville, NV 89460

Mathew Mattlock
1281 Kimmerling Road, Suite 18-A
Gardnerville, NV 89460

I declare that I am employed in the office of a member of the bar of this court at whose direction
the service was made.

Zabett Buzzone
Zabett Buzzone